

# Cabinet

10 April 2025

## Amendments to the Contract Standing Orders

### Recommendation

That Cabinet endorses the changes to the Contract Standing Orders that form part of the Council's Constitution as set out at Appendix 1 to this Report and recommends them to Council for approval.

### 1. Executive Summary

- 1.1 The Council is required by section 135 of the Local Government Act 1972 to have Contract Standing Orders in relation to contracts for the supply of goods or materials or for the execution of works. The Contract Standing Orders (CSOs) form part of the Council's Constitution, which the Council is required to have under section 9P of the Local Government Act 2000. The CSOs were last reviewed and changes approved by full Council in 2021.
- 1.2 The Procurement Act 2023 (the Procurement Act) received royal assent on 26 October 2023 and although it was initially due to come into force in October 2024, this was delayed and the Act came into force on 24 February 2025.
- 1.3 The Procurement Act reforms the rules for public procurement and consolidates various existing public procurement rules into one regime. The changes made by the Procurement Act and its associated Regulations are intended to improve the way that public bodies procure through simpler, more flexible and effective approaches to procurement. In particular, some of the major changes include:
  - 1.3.1 New procurement procedures which are intended to enable procurements to be completed in a more agile way.
  - 1.3.2 The introduction of a Central Digital Platform to enable suppliers to find out what procurement opportunities are on the horizon and to provide information on contracts that have been let and how they have been changed.
  - 1.3.3 Increased transparency by way of more notices which are required to be published at various stages of a procurement.
  - 1.3.4 Changes to the standstill process which is the period between the publication of a contract award notice and the date the contract can be entered into.
  - 1.3.5 New requirements to have Key Performance Indicators (KPIs) for certain contracts

- 1.3.6 New contract management requirements following the award of a contract including publishing performance against KPIs and excluding suppliers and sub-contractors who pose unacceptable risks
  - 1.3.7 A new central debarment list for excluded suppliers.
  - 1.3.8 A requirement to have regard to the National Procurement Policy Statement which sets out the national strategic Government priorities for public procurement and Procurement Objectives including eliminating barriers to small and medium-sized enterprises.
- 1.4 In addition to the Procurement Act, the Health Care Services (Provider Selection Regime) Regulations 2023 (the PSR Regulations) came into force on 1 January 2024. The PSR Regulations apply to the procurement of certain health care and public health services. Therefore, whilst they do not apply to the majority of the contracts the Council procures and enters into, they will apply to a small number of contracts for public health services and also certain health services that might be procured by the Council under partnership arrangements with NHS partners.
- 1.5 A great deal of work has been and continues to be undertaken by officers to implement these changes including the revision of the notices required under the new regime, review of all procurement documentation and the development of guidance for staff. A core group of officers including those with legal, financial and commercial expertise have reviewed the Council's policies, procedures and Contract Standing Orders to ensure compliance with the new regime. Training has been provided to those within the Council who purchase, commission or oversee procurement activity and contracts. This has been both internal and provided by external experts including CIPFA and external legal specialists. Further training around Contract Standing Orders will follow once the revised CSOs have been approved by full Council.
- 1.6 The CSOs have been amended to ensure they are consistent with the Act and its associated Regulations and also the PSR Regulations. The proposed changes were considered and endorsed by the Audit and Standards Committee on 20 March 2025 and as they form part of the Constitution, any amendments to them require the approval of full Council and therefore Cabinet is asked to endorse the changes and recommend them to full Council.

## **2. Financial Implications**

- 2.1 There are no direct financial implications as a result of the changes being proposed to the CSOs, however, there are financial implications in respect of the implementation of the changes required by the Procurement Act and ongoing compliance with the new regime. Additional capacity has been built into the overall Council budget to reflect this.

### **3. Environmental Implications**

- 3.1 There are no direct environmental implications as a result of the changes being proposed to the CSOs, however, the new procurement regime does give more prominence to environmental considerations as contracting authorities may assess tenders against a wide range of factors to determine the best solution including wider social, economic and environmental issues and benefits.

### **4. Supporting Information**

- 4.1 The changes that have been made to the CSOs do not affect the balance between member and officer decision making as no amendments have been made to the thresholds over which member authority is required to start a procurement process. There is an increased emphasis on seeking advice from Procurement, Contract Management and Legal colleagues prior to undertaking a new procurement or making changes to existing contracts to ensure that all requirements of procurement legislation are complied with. This is particularly important as the Council navigates the new legislation. The majority of the changes have been made to ensure consistency with the new procurement legislation and the key changes in this respect are as follows:
- 4.1.1 The procurement objectives and principles as set out in the procurement legislation and which the Council must have regard to are specifically included.
  - 4.1.2 The list of contracts and activities which the CSOs do not apply to have been reviewed to ensure they are consistent with the procurement legislation.
  - 4.1.3 The list of contracts where direct award may be justified, but other aspects of the CSOs and procurement legislation may still apply (such as requirements to publish notices) have been reviewed to ensure they are consistent with the procurement legislation.
  - 4.1.4 Amendments have been made throughout the CSOs to ensure that officers undertaking a procurement or wishing to vary, extend or terminate existing contracts seek advice from Procurement, Contract Management and Legal colleagues. This is particularly important given the new transparency requirements (through the publication of various notices) which are required under the procurement legislation and which only Procurement and Contract Management officers will be able to publish.
  - 4.1.5 The section on modifying contracts has been reviewed to ensure that it is consistent with the procurement legislation.
  - 4.1.6 The list of matters which must be specified in contract documents has been reviewed to ensure it is consistent with the procurement legislation.

- 4.1.7 Reference to when Key Performance Indicators are required have been included to ensure consistency with the procurement legislation.
  - 4.1.8 Information on the various types of notices that might be required under the Procurement Act has been included and it has been made clear that only officers from Procurement and Contract Management are authorised to publish such notices on the Central Digital Platform.
  - 4.1.9 The sections on frameworks (previously referred to as framework agreements), award criteria and evaluation and award of contracts and debriefing tenderers have been updated to ensure consistency with the procurement legislation.
  - 4.1.10 A section on supplier exclusion and debarment has been added to ensure consistency with the procurement legislation.
  - 4.1.11 A section on transitional arrangements has been included to clarify which rules apply to contracts that were awarded prior to 24 February 2025 or awarded after that date if the procurement went live before and which rules apply if the contract was awarded or procurement went live after that date.
  - 4.1.12 The definitions and terminology have been updated throughout to ensure consistency with the procurement legislation.
- 4.2 In addition to the above changes, the CSOs have been reviewed to ensure that they generally fit for purpose and up to date. In particular, amendments have been made to the section which governs when the Council is a supplier to clarify the processes that are required to be followed in such situations. Clarification has also been included in respect of the governance for entering into grant agreements and there is an increased emphasis on engaging with Procurement, Legal and Contract Management colleagues earlier. Finally, the order of the CSOs has been amended to make them easier to follow.

## **5. Timescales associated with the decision and next steps**

- 5.1 If endorsed by Cabinet, the proposed amendments to the CSOs will be taken to full Council in May for approval.
- 5.2 Once approved the Council's Constitution will be updated to reflect the amended CSOs and communications will go out to staff to make them aware of the changes.

## **Appendices**

- 1. Appendix 1 – Contract Standing Orders with proposed changes tracked

## **Background Papers**

- 1. None

|                    | <b>Name</b>   | <b>Contact Information</b>        |
|--------------------|---|-----------------------------------|
| Report Author      | Sioned Harper,<br>Senior Solicitor &<br>Team Manager –<br>Governance                  | sionedharper@warwickshire.gov.uk  |
| Director           | Sarah Duxbury,<br>Director of Strategy,<br>Planning and<br>Governance                 | sarahduxbury@warwickshire.gov.uk  |
| Executive Director | Rob Powell,<br>Executive Director for<br>Resources                                    | robpowell@warwickshire.gov.uk     |
| Portfolio Holder   | Councillor Yousef<br>Dahmash,<br>Portfolio Holder for<br>Customer &<br>Transformation | yousefdahmash@warwickshire.gov.uk |

The report was circulated to the following members prior to publication:

Local Member(s): N/A as County Wide report

Other members: Councillors Adrian Warwick, Parminder Singh Birdi, Sarah Boad, Sarah Feeney, and Will Roberts